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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,699	08/26/2003	Peter W. A. Bergin	C63.12-0002	4042

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EXAMINER

D ADAMO, STEPHEN D

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/648,699

Applicant(s)

BERGIN, PETER W. A.

Examiner

Stephen D'Adamo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-10 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 20 December 2004 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the limitation "the accessory support" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

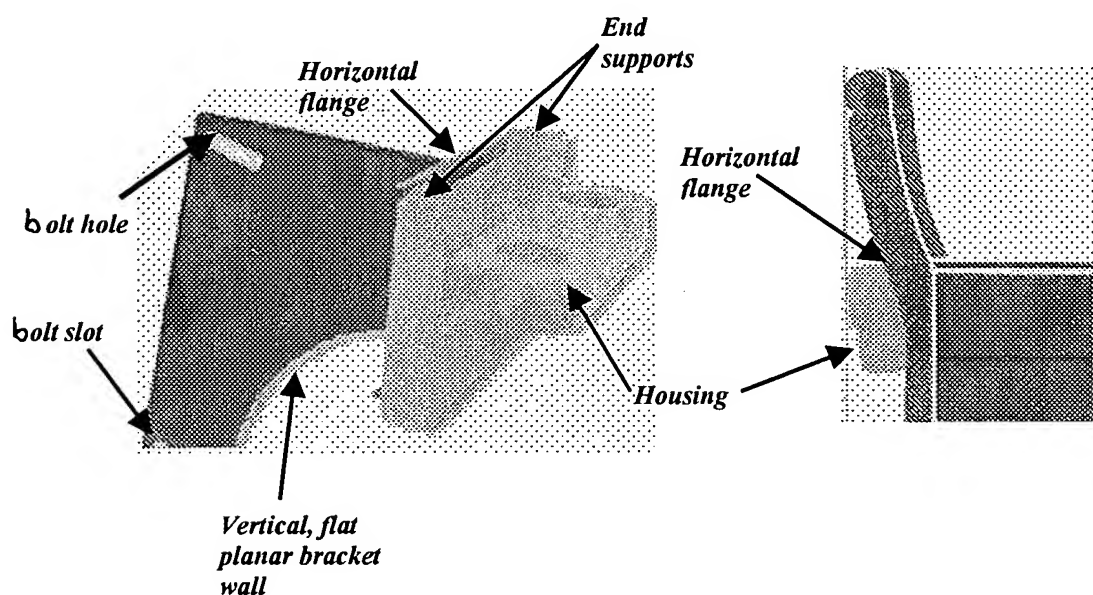
A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1-3, 5, 6, 8 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by S & H Enterprises.

S & H Enterprises discloses a book rack (shown below) comprising a housing having receptacles and a substantially vertical, flat planar bracket wall extending substantially perpendicular from the housing. As seen in the second figure, the housing extends laterally of the bracket wall and engages the surfaces of the two adjacent chair backs. A generally horizontal flange is seen on the holder at an upper side and has an edge contoured to abut the chair backs, as seen in the both figures. The end supports are located on opposite ends of the holder and comprises a separate end support member at each end. The supports include horizontal and vertical engagement surfaces wherein the vertical engagement surfaces have a height substantially similar to a height of the accessory support. Furthermore, the bracket wall includes a bolt hole and a bolt slot for attaching the holder to the chair back bracket.



Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forston (6,457,772) in view of S & H Enterprises and also in view of Manne (2,807,315).

Forston discloses a "food and beverage holder" or an accessory support for positioning on the backs 16 of a pair of side-by-side chairs 14 as seen in Figure 1. The chairs have chair back brackets 18 located along sides of the chair backs that are attached to a standard 12 when the chairs are side-by-side as seen in Figure 1. The accessory support 10 comprises a housing 20 having receptacles 32 and 52 for receiving accessories as seen in Figure 1. A substantially vertical bracket wall 44 substantially perpendicularly from the housing is for placement between a pair of chair backs and securing to the chair back brackets. A flange 50 on the housing at an upper side extends toward the chair back. The edge of flange 50 is contoured to conform to the chair back contour. The receptacles 32 and 52 can receive books, pencils, communion cups, memo pads, and many other accessories sized to fit within the receptacles. The housing includes a main section 20 protruding outwardly from the chair backs on which the accessory support housing is mounted as seen in the figures. A wall, the side of the housing where the base member 34 attaches, is spaced from the chair backs. Furthermore, the ends of the housing 30 have corner walls or receiving component 66, including ears, protruding from the walls to

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define the outer lateral side edges of the main section. Note, the ears of the receiving component 66 are seen below. However, Forston's fails to disclose the substantially vertical bracket wall 44 as a flat planar bracket. Yet, S&H Enterprises discloses a "wood book rack" comprising a vertical, flat planar bracket wall that "mounts to the back between chairs, nestled in the concave area at arm level height." It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vertical bracket of Forston with a vertical, flat planar bracket, as taught by S&H enterprises, for providing a more universal bracket since the bracket is narrower and can fit between different, spaced apart chairs. Furthermore, since the applicant's specification does not state that the flat planar design of the bracket, as claimed, solves any particular problem or produces any unexpected result, whether the fixing member is a vertical "shaped" planar bracket or a vertical flat planar bracket is merely a matter of engineering design choice, and thus does not serve to patentably distinguish the claimed invention over the prior art.

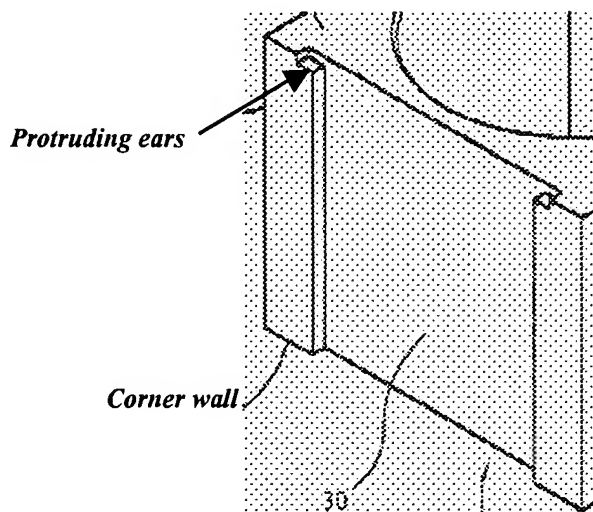
In regards to claim 6, S&H Enterprises discloses a bolt hole and a bolt slot in the bracket wall for receiving a bolt and being secured to the chair bracket. The bolt hole and slot are labeled in the drawing below.

Regarding claim 8, Forston discloses an accessory support 10 for attaching to a pair of side-by-side chairs. The support includes a housing 20 and a bracket wall 44 extending outwardly from the housing for placement between the brackets of one of the chairs. A flange 50 on the holder at an upper side has an edge contoured to fit into a concave recess

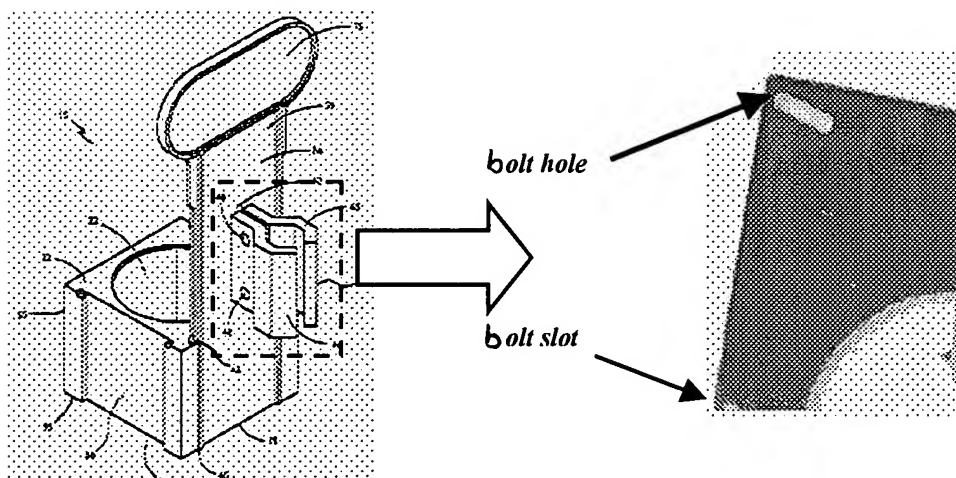
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between the chairs. Note, the flange and bracket walls 44 fit into a concave recess

between the chairs.



Modifying Forston's holder with S & H Enterprises's bracket:



Regarding claim 10, Forston fails to expressly disclose a pair of end supports protruding from the accessory housing and engaging the chair back surfaces. Yet, Manne generally teaches of end supports protruding from an accessory support and engaging the back surface of a chair. Manne discloses a bookrack attached similarly as that of Forston – in

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between two chair backs and connected to a standard. The bookrack includes end supports or bottom portions 30 protruding from the housing 18. As seen in the Figures, end supports 30 are spaced laterally from and on opposite side of the mounting bracket 21. Moreover, the end supports have a separate end member 32. The bumpers 32 include a generally vertical wall that is inclined toward the accessory support and is “adapted to abut against chair backs” (col.2, line 11) that are inclined in a similar direction. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include end supports 30 and bumpers 32 on Forston’s accessory holder, as generally taught by Manne, for further protecting both the chair backs and the accessory holder when the two component contact one another.

Allowable Subject Matter

5. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen D'Adamo whose telephone number is 703-305-8173. The examiner can normally be reached on Monday-Thursday 6:00-3:30, 2nd Friday 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Pete Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SD

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March 1, 2005



Peter M. Cuomo
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